IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

MACA.No. 466 of 2003()

OPMV.1434/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

APPELLANT - PETITIONER:

'DILEEP V.D.,VELLACKAL,
THURUTHY P.O.,
CHANGANACHERRY.

BY ADV. SRI.JOHN VARGHESE

RESPONDENTS:

1. M.J.ANTONY,
S/O.JOSEPH,MARIYAYIKAL,
CHEERANCHIRA P.O.,CHETHIPURAM,
CHANGANACHERRY.

2. THE ORIENTAL INSURANCE COMPANY LTD.,
CHANGANACHERRY.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.A.C.A. NO. 466 OF 2003

==========

Dated this the 22nd day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1434 of 1994 on the file of the Motor Accidents Claims Tribunal, Kottayam is the appellant. He filed the O.P. claiming a sum of Rs.50,000/- as compensation against the respondents. It was averred that while petitioner was unloading granite stones from a lorry bearing Reg.No.KLR-8825 the driver of the vehicle, second respondent, drove the vehicle forward without any signal and petitioner fell down and sustained injuries. It was also averred that the accident occurred due to the negligence on the part of the driver. Owner and driver did not appear and contest. Insurer alone contested the matter. According to the contesting respondent no accident as alleged in the O.P. took place. It was also contended that the petitioner was a passenger in a goods vehicle and he is not entitled to get any compensation. It was further contended that the vehicle was covered with only an act only policy and as such the Insurer is

not liable. Negligence alleged and quantum of compensation claimed all are denied.

2. Tribunal found that the petitioner failed to establish that an accident occurred on 5.11.1993 and he sustained injuries in that accident. The Tribunal had found that the criminal case was registered after a lapse of about 20 days and that too on the basis of a complaint filed by the appellant to the Superintendent of Police, Changanacherry. No wound certificate was also produced. Exhibit A4 Discharge Card produced was rejected by the Tribunal on the ground that there is no mention of any accident in that card. Tribunal further found that the petitioner did not adduce any oral evidence or examine witnesses. So the Tribunal dismissed the O.P.

3. No accident-cum-wound certificate was produced in this case. There was delay in registering the criminal complaint also. So, the petitioner ought to have adduced positive evidence to establish that he sustained injuries in a motor vehicle accident. So the finding of the Tribunal cannot be said to be perverse or illegal. But considering the facts

and circumstances of the case, I am of the view that it is only just and proper to give the petitioner one more opportunity to adduce further evidence to establish the fact that he sustained injuries in a motor vehicle accident involving lorry No.KLR-8825. For that purpose, the case has to go back to the Tribunal.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing O.P(MV) No.1434 of 1994 is hereby set aside. Tribunal is directed to take O.P(MV) No.1434 of 1994 back to file and dispose of the same afresh in accordance with law after giving both sides opportunity to adduce further evidence. Parties shall appear before the Tribunal on 23.7.2007.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A.

==========

J U D G M E N T

22ND JUNE, 2007